ESTTA Tracking number:

ESTTA356499 07/06/2010

Filing date:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	ConAgra Foods RDM, Inc.
Granted to Date of previous extension	07/04/2010
Address	One ConAgra Drive Omaha, NE 68102 UNITED STATES

Attorney	Christopher M. Bikus
information	Husch Blackwell Sanders LLP
	1620 Dodge StreetSuite 2100
	Omaha, NE 68102
	UNITED STATES
	pto-om@huschblackwell.com Phone:402-964-5144

Applicant Information

Application No	77795549	Publication date	01/05/2010
Opposition Filing Date	07/06/2010	Opposition Period Ends	07/04/2010
Applicant	Chrisolm's Isolm, Healthier Ch 1007 25th Avenue East Tampa, FL 33605 UNITED STATES	noice Cookie	

Goods/Services Affected by Opposition

Class 030.	
All goods and services in the class are opposed, namely: Cookies	

Grounds for Opposition

Priority and likelihood of confusion Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1528468	Application Date	08/01/1988
Registration Date	03/07/1989	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 029. First use: First Use: 1988/06/22 First Use In Commerce: 1988/06/22
	FROZEN PREPARED DINNERS COMPRISED OF MEAT AND VEGETABLES AND FRUIT; POULTRY AND VEGETABLES AND FRUIT; SEAFOOD AND VEGETABLES AND FRUIT

U.S. Registration No.	1663742	Application Date	03/22/1990
Registration Date	11/05/1991	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1990/10/16 First Use In Commerce: 1990/10/16		
	shelf stable prepared entrees and dinners consisting primarily of meat and vegetables, poultry and vegetables and/or seafood and vegetables, soups, [stews and chili]		
	Class 030. First use: First Use: 1990/10/16 First Use In Commerce: 1990/10/16		
	[shelf stable prepared entree vegetables, pasta and cheese		

U.S. Registration No.	1722202	Application Date	06/03/1991
Registration Date	10/06/1992	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
Design Mark			_
	HEAL	<u>тнү</u> ‡Сп	OICE
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use	e: 1988/12/26 First U	se In Commerce: 1988/12/26
	prepared dinners and entrees or vegetables; stews; soups;		
	Class 030. First use: First Use	e: 1989/10/30 First U	se In Commerce: 1989/10/30
	prepared dinners and entrees bakery goods; and frozen cor		of pasta; spaghetti; lasagna;

U.S. Registration No.	1724726	Application Date	06/07/1990
Registration Date	10/13/1992	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE	•	
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use processed meats	e: 1991/12/14 First U	se In Commerce: 1991/12/14

II C. Domintration	4744547	Application Data	05/04/4000
U.S. Registration No.	1741517	Application Date	05/21/1992
Registration Date	12/22/1992	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
Design Mark	HEALTHY & CHOICE		
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use [ground beef and] franks	e: 1991/08/21 First U	se In Commerce: 1991/08/21
U.S. Registration No.	1743392	Application Date	05/21/1992
Registration Date	12/29/1992	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1991/08/21 First Use In Commerce: 1991/08/21 ground beef and franks		
U.S. Registration No.	1783153	Application Date	01/22/1991
Registration Date	07/20/1993	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1991/09/00 First Use In Commerce: 1991/09/00 [cheese,] lunch meats, prepared main dish entrees consisting primarily of beef, poultry or seafood Class 030. First use: First Use: 1991/09/00 First Use In Commerce: 1991/09/00 [pizza, barbeque sauce,] and spaghetti sauce		
U.S. Registration No.	1818315	Application Date	06/03/1991
Registration Date	01/25/1994	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
Design Mark	HEALTHY	†CHOICI	
Description of	NONE		

Mark	
Goods/Services	Class 029. First use: First Use: 1991/09/00 First Use In Commerce: 1991/09/00
	[cheese], lunch meats, prepared main dish entrees consisting primarily of beef, poultry or seafood
	Class 030. First use: First Use: 1991/09/00 First Use In Commerce: 1991/09/00
	pizza, [barbeque sauce,] spaghetti sauce and bakery goods

U.S. Registration No.	1849245	Application Date	08/03/1992
Registration Date	08/09/1994	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
Design Mark	HEAI CHO	THY	7
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Us cookbooks [and recipe cards		Jse In Commerce: 1993/09/17

U.S. Registration No.	1855162	Application Date	08/03/1992
Registration Date	09/20/1994	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1993/09/17 First Use In Commerce: 1993/09/17 cookbooks and recipe cards		

U.S. Registration No.	1967461	Application Date	12/28/1992
Registration Date	04/09/1996	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1995/09/06 First Use In Commerce: 1995/09/06 unpopped popcorn		

U.S. Registration No.	1973507	Application Date	12/24/1992
Registration Date	05/07/1996	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
Design Mark			
	HEAL	пнү;Сно	DICE
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1995/09/06 First Use In Commerce: 1995/09/06 unpopped popcorn		
U.S. Registration No.	3391393	Application Date	06/29/2007
Registration Date	03/04/2008	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
	HEALTI	НҮ СЬ	HOICE
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2007/05/21 First Use In Commerce: 2007/05/21 Paninis		
U.S. Registration No.	3551633	Application Date	02/29/2008
Registration Date	12/23/2008	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE FRESH MIXERS		

Design Mark			
	HEALTHY CHOICE FRESH MIXERS		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2008/08/27 First Use In Commerce: 2008/08/27 PREPARED OR PACKAGED ENTREES CONSISTING PRIMARILY OF PASTA OR RICE		
U.S. Registration No.	3589226	Application Date	03/17/2006
Registration Date	03/10/2009	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE		
	HEALT	НҮ СІ	HOICE
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2006/11/07 First Use In Commerce: 2006/11/07 Flour		
U.S. Registration No.	3639188	Application Date	11/18/2008
Registration Date	06/16/2009	Foreign Priority Date	NONE
Word Mark	HEALTHY CHOICE FRESH MIXERS		

Design Mark	HEALTHY CHOICE FRESH MIXERS
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2008/08/27 First Use In Commerce: 2008/08/27
	prepared or packaged entrees consisting primarily of meat, poultry, seafood and/or vegetables

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher M. Bikus/
Name	Christopher M. Bikus
Date	07/06/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In The Matter Of Application Serial No. 77/795,549 Published In the *Official Gazette* on January 5, 2010

CONAGRA FOODS RDM, INC.)	
Opposer,)	MARK: CHISOLM'S ISOLM HEALTHIER CHOICE COOKIES
v.)	APP. NO.: 77/795,549
CHRISOLM'S ISOLM, HEALTHIER CHOICE COOKIE)	
Applicant.)	

To the Commissioner of Patents and Trademarks:

NOTICE OF OPPOSITION

ConAgra Foods RDM, Inc., a corporation organized and existing under the laws of the State of Delaware, with offices located at One ConAgra Drive, Omaha, Nebraska 68102, believes that it will be damaged by registration of the mark shown in Application Serial No. 77/795,549 and hereby opposes the same.

As grounds for opposition, it is alleged that:

- 1. Pursuant to Application Serial No. 77/795,549, filed on August 3, 2009, Applicant seeks to register the mark CHISOLM'S ISOLM HEALTHIER CHOICE COOKIES ("Applicant's Mark") as a trademark for "Cookies" in International Class 30, as evidenced by the publication of said mark in the January 5, 2010 issue of the Official Gazette.
- 2. Opposer is the owner of Registration No. 1,528,468 issued on March 7, 1989 pursuant to Application Serial No. 73/743,484, for the trademark HEALTHY CHOICE as used on "frozen

prepared dinners comprised of meat and vegetables and fruit; poultry and vegetables and fruit; seafood and vegetables and fruit" in International Class 29. Opposer has used the trademark HEALTHY CHOICE in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as June 22, 1988 and continues to use the trademark HEALTHY CHOICE on these goods in interstate commerce.

- 3. Opposer is the owner of Registration No. 1,663,742, issued on November 5, 1991 pursuant to Application Serial No. 74/041,263, for the trademark HEALTHY CHOICE as used on "soups" in International Class 29. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as October 16, 1990, and continues to use the trademark HEALTHY CHOICE in interstate commerce.
- 4. Opposer is the owner of Registration No. 1,722,202, issued on October 6, 1992 pursuant to Application Serial No. 74/172,150, for the trademark HEALTHY CHOICE & DESIGN as used on "prepared dinners and entrees consisting primarily of beef, poultry, seafood and/or vegetables; stews; soups; chili; and egg product" in International Class 29 and "prepared dinners and entrees consisting primarily of pasta; spaghetti; lasagna; bakery goods; and frozen confections" in International Class 30. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as December 26, 1988, and continues to use the trademark HEALTHY CHOICE & DESIGN in interstate commerce.

HEALTHY! CHOICE

5. Opposer is the owner of Registration No. 1,724,726, issued on October 13, 1992 pursuant to Application Serial No. 74/800,695, for the trademark HEALTHY CHOICE as used on "processed meats" in International Class 29. Opposer has used the trademark in interstate commerce

on these goods, through its licensees and predecessors in interest, since at least as early as December 14, 1991, and continues to use the trademark HEALTHY CHOICE in interstate commerce.

6. Opposer is the owner of Registration No. 1,741,517, issued on December 22, 1992 pursuant to Application Serial No. 74/277,469, for the trademark HEALTHY CHOICE & DESIGN as used on "franks" in International Class 29. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as August 21, 1991, and continues to use the trademark HEALTHY CHOICE & DESIGN in interstate commerce.

HEALTHY! CHOICE

- 7. Opposer is the owner of Registration No. 1,743,392, issued on December 29, 1992 pursuant to Application Serial No. 74/277,619, for the trademark HEALTHY CHOICE as used on "franks" in International Class 29. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as August 21, 1991, and continues to use the trademark HEALTHY CHOICE in interstate commerce.
- 8. Opposer is the owner of Registration No. 1,783,153, issued on July 20, 1993 pursuant to Application Serial No. 74/801,198, for the trademark HEALTHY CHOICE as used on "lunch meats; prepared main dish entrees consisting primarily of beef, poultry or seafood" in International Class 29 and "spaghetti sauce" in International Class 30. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as September 1, 1991, and continues to use the trademark HEALTHY CHOICE in interstate commerce.
- 9. Opposer is the owner of Registration No. 1,818,315, issued on January 25, 1994 pursuant to Application Serial No. 74/801,407, for the trademark HEALTHY CHOICE & DESIGN as used on "lunch meats; prepared main dish entrees consisting primarily of beef, poultry or seafood" in

International Class 29 and "pizza, spaghetti sauce and bakery goods" in International Class 30. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as September 1, 1991, and continues to use the trademark HEALTHY CHOICE & DESIGN in interstate commerce.

HEALTHY! CHOICE

10. Opposer is the owner of Registration No. 1,849,245, issued on August 9, 1994 pursuant to Application Serial No. 74/300,427, for the trademark HEALTHY CHOICE & DESIGN as used on "cookbooks" in International Class 16. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as September 17, 1993, and continues to use the trademark HEALTHY CHOICE & DESIGN in interstate commerce.

HEALTHY CHOICE

- 11. Opposer is the owner of Registration No. 1,855,162, issued on September 20, 1994 pursuant to Application Serial No. 74/300,426, for the trademark HEALTHY CHOICE as used on "cookbooks" in International Class 16. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as September 17, 1993, and continues to use the trademark HEALTHY CHOICE in interstate commerce.
- 12. Opposer is the owner of Registration No. 1,967,461, issued on April 9, 1996 pursuant to Application Serial No. 74/802,727, for the trademark HEALTHY CHOICE as used on "unpopped popcorn" in International Class 31. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as September 6, 1995, and continues to use the trademark HEALTHY CHOICE in interstate commerce.

13. Opposer is the owner of Registration No. 1,973,507, issued on May 7, 1996 pursuant to Application Serial No. 74/802,761, for the trademark HEALTHY CHOICE & DESIGN as used on "unpopped popcorn" in International Class 31. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as September 6, 1995, and continues to use the trademark HEALTHY CHOICE & DESIGN in interstate commerce.

HEALTHY! CHOICE

- 14. Opposer is the owner of Registration No. 3,391,393, issued on March 4, 2008 pursuant to Application Serial No. 77/219,488, for the trademark HEALTHY CHOICE as used on "paninis" in International Class 30. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as May 21, 2007, and continues to use the trademark HEALTHY CHOICE in interstate commerce.
- 15. Opposer is the owner of Registration No. 3,551,633, issued on December 23, 2008 pursuant to Application Serial No. 77/409,426, for the trademark HEALTHY CHOICE FRESH MIXERS as used on "prepared or packaged entrees consisting primarily of pasta or rice" in International Class 30. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as August 27, 2008, and continues to use the trademark HEALTHY CHOICE FRESH MIXERS in interstate commerce.
- 16. Opposer is the owner of Registration No. 3,589,226, issued on March 10, 2009 pursuant to Application Serial No. 78/980,820, for the trademark HEALTHY CHOICE as used on "flour" in International Class 30. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as November 7, 2006, and continues to use the trademark HEALTHY CHOICE in interstate commerce.

- 17. Opposer is the owner of Registration No. 3,639,188, issued on June 16, 2009 pursuant to Application Serial No. 77/616,887, for the trademark HEALTHY CHOICE FRESH MIXERS as used on "prepared or packaged entrees consisting primarily of meat, poultry, seafood and/or vegetables" in International Class 29. Opposer has used the trademark in interstate commerce on these goods, through its licensees and predecessors in interest, since at least as early as August 27, 2008, and continues to use the trademark HEALTHY CHOICE FRESH MIXERS in interstate commerce.
- 18. There is no issue as to priority. Opposer's date of first use in commerce for its mark is well prior to the filing date of Application Serial No. 77/795,549.
- 19. Applicant's Mark and Opposer's mark are almost identical in sight, sound and commercial impression, and as such, a likelihood of confusion exists between Applicant's Mark and Opposer's mark, HEALTHY CHOICE.
- 20. Opposer's goods sold under Opposer's mark and Applicant's goods sold under its mark are sold to, or are capable of sale to, the same class of consumers.
- 21. The application for CHISOLM'S ISOLM HEALTHIER CHOICE COOKIES, if permitted to be registered, will cause dilution of the distinctiveness of Opposer's mark and otherwise injure Opposer's reputation and unique identity in the minds of consumers.
- 22. If Applicant is permitted to use and register Applicant's Mark in connection with "cookies", such use and registration is likely to cause confusion and lead to deception as to the source, origin and/or sponsorship of the goods bearing Applicant's Mark, causing damage and injury to Opposer and its HEALTHY CHOICE trademark.
- 23. If Applicant is granted the registration herein opposed, Applicant would thereby obtain at least a prima facie exclusive right to use the CHISOLM'S ISOLM HEALTHIER CHOICE COOKIES trademark, causing damage and injury to Opposer.

WHEREFORE, Opposer prays that trademark Application Serial No. 77/795,549 be rejected, and that the mark therein sought for the goods therein specified be denied and refused.

Dated this 6th day of July, 2010.

Respectfully submitted,

CONAGRA FOODS RDM, INC.

By: /Christopher M. Bikus/

Christopher M. Bikus Husch Blackwell Sanders LLP 1620 Dodge Street, Suite 2100

Omaha, NE 68102 Tel: 402-964-5144 Fax: 402-964-5050

 $\frac{chris.bikus@huschblackwell.com}{pto-om@huschblackwell.com}$

ATTORNEY FOR OPPOSER

CERTIFICATION UNDER 37 C.F.R. § 1.8

I hereby certify that this NOTICE OF OPPOSITION is being filed electronically with the United States Patent and Trademark Office utilizing the *Electronic System for Trademark Trials and Appeals* this 6th day of July, 2010.

/Christopher M. Bikus/
Christopher M. Bikus

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing NOTICE OF OPPOSITION was served via United States first class mail, postage pre-paid, on this 6th day of July, 2010 to the following:

Albert Chisolm Chrisolm's Isolm Healthier Choice Cookie 1007 25th Ave. East Tampa, FL 33605-1739

> /Christopher M. Bikus/ Christopher M. Bikus